

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

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JOAQUIN ALBERTO MONTOYA §  
v. § 2:13-CV-0175  
UNITED STATES OF AMERICA §

**ORDER OVERRULING OBJECTION, ADOPTING REPORT  
AND RECOMMENDATION, AND DENYING  
MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE**

Came for consideration the motion to vacate, set aside, or correct sentence by a person in federal custody filed by defendant. On November 10, 2014, the United States Magistrate Judge issued an order consolidating a second motion to vacate filed by the same petitioner in cause number 2:14-CV-96 into this case. The Magistrate Judge then issued a Report and Recommendation on the same date, recommending Montoya's September 12, 2013, and April 17, 2014, motions to vacate be denied. Defendant filed an objection on November 18, 2014, claiming that the Report and Recommendation failed to address his argument for a reduction of his sentence based on Amendment 782. The United States filed a response to the objection on November 25, 2014, arguing that Montoya's sentence reduction argument should be raised in a separate motion under 18 U.S.C. § 3582(c).

Having made an independent examination of the record in this case and having examined the Report and Recommendation of the Magistrate Judge, the undersigned United States District Judge hereby overrules defendant's objections for the reasons stated in the United States' response to those

objections and ADOPTS the Report and Recommendation. Accordingly, both defendant's pro se motion, filed September 12, 2013, and defendant's counseled motion, filed April 17, 2014, are, in all things, DENIED.

IT IS SO ORDERED.

ENTERED this 1st day of December 2014.

Mary Lou Robinson  
MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE